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SENATE BILL 587

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO ALCOHOL; PROHIBITING THE RETAIL SALE OF ALCOHOLIC BEVERAGES TO PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING THE MOTOR VEHICLE DIVISION TO ESTABLISH A DATABASE AND PROCEDURE FOR LICENSED RETAIL LIQUOR DISTRIBUTORS TO DETERMINE IF A PERSON IS PROHIBITED FROM THE RETAIL PURCHASE OF ALCOHOLIC BEVERAGES; ENACTING A NEW SECTION OF THE LIQUOR CONTROL ACT; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Liquor Control Act is enacted to read:

" NEW MATERIAL PROHIBITED RETAIL SALES--PENALTIES. --

A. It is a violation of the Liquor Control Act for a person who has a conviction for driving while under the

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1 influence of intoxicating liquor or drugs, as provided in
2 Section 66-8-102 NMSA 1978, to purchase alcoholic beverages
3 from a retailer for a period of five years.

4 B. It is a violation of the Liquor Control Act for
5 a licensed retailer to sell alcoholic beverages to a person who
6 has a conviction for driving while under the influence of
7 intoxicating liquor or drugs, as provided in Section 66-8-102
8 NMSA 1978, for a period of five years.

9 C. A licensed retailer, his employee or agent shall
10 require the purchaser of alcoholic beverages to show
11 identification in the form of a driver's license or
12 identification card. If the driver's license or identification
13 card is issued by this state, the seller shall determine, in a
14 manner established by the motor vehicle division of the
15 taxation and revenue department, if the purchaser is restricted
16 from the purchase of alcoholic beverages as a result of a
17 conviction for driving while under the influence of
18 intoxicating liquor or drugs. A licensed retailer or the
19 retailer's employee or agent shall be relieved of this
20 requirement if the driver's license or identification card is
21 not issued by this state.

22 D. In the event a person has subsequent convictions
23 for driving while under the influence of intoxicating liquor or
24 drugs, as provided in Section 66-8-102 NMSA 1978, the person
25 shall not purchase alcoholic beverages from a retailer for a

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1 period of five years; provided that the time period does not
2 exceed a total period of five years following the most recent
3 conviction.

4 E. A person who gives, loans, sells or delivers an
5 identification card to a person unable to purchase alcoholic
6 beverages under this section with the knowledge that the person
7 intends to use the identification card for the purpose of
8 purchasing alcoholic beverages is guilty of a petty misdemeanor
9 and shall be sentenced pursuant to the provisions of Section
10 31-19-1 NMSA 1978.

11 F. A person who purchases alcoholic beverages for a
12 person unable to purchase alcoholic beverages under this
13 section is guilty of a petty misdemeanor and shall be sentenced
14 pursuant to the provisions of Section 31-19-1 NMSA 1978. "

15 Section 2. Section 66-5-15 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 237, as amended) is amended to read:

17 "66-5-15. LICENSES ISSUED TO APPLICANTS. --

18 A. The department shall, upon payment of the
19 required fee, issue to every qualified applicant a driver's
20 license as applied for. The license shall bear the full name,
21 date of birth, current New Mexico physical or mailing address,
22 a full face or front-view photograph of the license holder and
23 a brief description of the licensee and the signature of the
24 licensee. A license shall not be valid unless it bears the
25 signature of the licensee.

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1 B. The license shall have a magnetic code, or other
2 marking as determined by the department, that will allow a
3 licensed retailer of alcoholic beverages to determine if the
4 licensee is not authorized to purchase alcoholic beverages as a
5 result of a conviction for driving while under the influence of
6 intoxicating liquor or drugs."

7 Section 3. Section 66-5-23 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 245, as amended) is amended to read:

9 "66-5-23. RECORDS TO BE KEPT BY THE DIVISION. --

10 A. The division shall file every application for a
11 driver's license or a commercial driver's license pursuant to
12 the provisions of the New Mexico Commercial Driver's License
13 Act received by it and shall maintain suitable indexes
14 containing:

15 (1) all applications denied and, on each, note
16 the reasons for denial;

17 (2) all applications granted;

18 (3) the name of every licensee whose license
19 has been suspended or revoked by the division and, after each,
20 note the reasons for the action; and

21 (4) the name of every licensee who has
22 violated ~~[his]~~ the licensee's written promise to appear in
23 court.

24 B. The division shall also file all abstracts of
25 court records of conviction or reports that it receives from

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1 the trial courts of this state or from a tribal court, which
2 show ~~[either that]~~ whether a driver is a first offender or a
3 subsequent offender and whether that offender was represented
4 by counsel or waived the right to counsel, ~~[with attention to]~~
5 and shall comply with the provisions of Article III of the
6 Driver License Compact ~~[and in connection therewith]~~. The
7 division shall maintain convenient records or make suitable
8 notations in order that the individual record of each licensee,
9 showing the convictions of the licensee ~~[in which he has been~~
10 ~~involved]~~, shall be readily ascertainable and available for the
11 consideration of the division upon any application for renewal
12 of license in determining if the licensee is prohibited from
13 the purchase of alcoholic beverages and at other suitable
14 times. "

15 Section 4. Section 66-5-405 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 332, as amended) is amended to read:

17 "66-5-405. CONTENTS OF CARD. --

18 A. The identification card shall adequately
19 describe the registrant and bear ~~[his]~~ the registrant's picture
20 that shall show a full face or front view for all registrants
21 and indicate donor status. All identification cards of persons
22 under the age of twenty-one years shall have a printed legend
23 indicating that the person is under twenty-one. The
24 identification card shall bear the following statement:

25 "STATE OF NEW MEXICO IDENTIFICATION

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CARD NO. _____

This card is provided solely for the purpose of establishing that the bearer described on the card was not the holder of a New Mexico driver's license as of the date of issuance of this card. This identification card is not a license. ISSUED FOR IDENTIFICATION PURPOSES ONLY".

B. The identification card shall have a magnetic code, or other marking as determined by the department, that will allow a licensed retailer of alcoholic beverages to determine if the holder is not authorized to purchase alcoholic beverages as a result of a conviction for driving while under the influence of intoxicating liquor or drugs."

Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person who has an alcohol concentration

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1 of eight one hundredths or more in his blood or breath to drive
2 a vehicle within this state; or

3 (2) a person who has an alcohol concentration
4 of four one hundredths or more in his blood or breath to drive
5 a commercial motor vehicle within this state.

6 D. Aggravated driving while under the influence of
7 intoxicating liquor or drugs consists of a person who:

8 (1) has an alcohol concentration of sixteen
9 one hundredths or more in his blood or breath while driving a
10 vehicle within this state;

11 (2) has caused bodily injury to a human being
12 as a result of the unlawful operation of a motor vehicle while
13 driving under the influence of intoxicating liquor or drugs; or

14 (3) refused to submit to chemical testing, as
15 provided for in the Implied Consent Act, and in the judgment of
16 the court, based upon evidence of intoxication presented to the
17 court, was under the influence of intoxicating liquor or drugs.

18 E. A person under first conviction pursuant to this
19 section shall be punished, notwithstanding the provisions of
20 Section 31-18-13 NMSA 1978, by imprisonment for not more than
21 ninety days or by a fine of not more than five hundred dollars
22 (\$500), or both; provided that if the sentence is suspended in
23 whole or in part or deferred, the period of probation may
24 extend beyond ninety days but shall not exceed one year. Upon
25 a first conviction pursuant to this section, an offender may be

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1 sentenced to not less than forty-eight hours of community
2 service or a fine of three hundred dollars (\$300). The
3 offender shall be ordered by the court to participate in and
4 complete a screening program described in Subsection K of this
5 section and to attend a driver rehabilitation program for
6 alcohol or drugs, also known as a "DWI school", approved by the
7 bureau and also may be required to participate in other
8 rehabilitative services as the court shall determine to be
9 necessary. In addition to those penalties, when an offender
10 commits aggravated driving while under the influence of
11 intoxicating liquor or drugs, the offender shall be sentenced
12 to not less than forty-eight consecutive hours in jail. If an
13 offender fails to complete, within a time specified by the
14 court, any community service, screening program, treatment
15 program or DWI school ordered by the court or fails to comply
16 with any other condition of probation, the offender shall be
17 sentenced to not less than an additional forty-eight
18 consecutive hours in jail. Notwithstanding any provision of
19 law to the contrary, if an offender's sentence was suspended or
20 deferred in whole or in part, and the offender violates any
21 condition of probation, the court may impose any sentence that
22 the court could have originally imposed and credit shall not be
23 given for time served by the offender on probation. Any jail
24 sentence imposed pursuant to this subsection for failure to
25 complete, within a time specified by the court, any community

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1 service, screening program, treatment program or DWI school
2 ordered by the court or for aggravated driving while under the
3 influence of intoxicating liquor or drugs shall not be
4 suspended, deferred or taken under advisement. On a first
5 conviction pursuant to this section, any time spent in jail for
6 the offense prior to the conviction for that offense shall be
7 credited to any term of imprisonment fixed by the court. A
8 deferred sentence pursuant to this subsection shall be
9 considered a first conviction for the purpose of determining
10 subsequent convictions.

11 F. A second or third conviction pursuant to this
12 section shall be punished, notwithstanding the provisions of
13 Section 31-18-13 NMSA 1978, by imprisonment for not more than
14 three hundred sixty-four days or by a fine of not more than one
15 thousand dollars (\$1,000), or both; provided that if the
16 sentence is suspended in whole or in part, the period of
17 probation may extend beyond one year but shall not exceed five
18 years. Notwithstanding any provision of law to the contrary
19 for suspension or deferment of execution of a sentence:

20 (1) upon a second conviction, an offender
21 shall be sentenced to a jail term of not less than ninety-six
22 consecutive hours, forty-eight hours of community service and a
23 fine of five hundred dollars (\$500). In addition to those
24 penalties, when an offender commits aggravated driving while
25 under the influence of intoxicating liquor or drugs, the

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1 offender shall be sentenced to a jail term of not less than
2 ninety-six consecutive hours. If an offender fails to
3 complete, within a time specified by the court, any community
4 service, screening program or treatment program ordered by the
5 court, the offender shall be sentenced to not less than an
6 additional seven consecutive days in jail. A penalty imposed
7 pursuant to this paragraph shall not be suspended or deferred
8 or taken under advisement; and

9 (2) upon a third conviction, an offender shall
10 be sentenced to a jail term of not less than thirty consecutive
11 days and a fine of seven hundred fifty dollars (\$750). In
12 addition to those penalties, when an offender commits
13 aggravated driving while under the influence of intoxicating
14 liquor or drugs, the offender shall be sentenced to a jail term
15 of not less than sixty consecutive days. If an offender fails
16 to complete, within a time specified by the court, any
17 screening program or treatment program ordered by the court,
18 the offender shall be sentenced to not less than an additional
19 sixty consecutive days in jail. A penalty imposed pursuant to
20 this paragraph shall not be suspended or deferred or taken
21 under advisement.

22 G. Upon a fourth conviction pursuant to this
23 section, an offender is guilty of a fourth degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of eighteen

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1 months, six months of which shall not be suspended, deferred or
2 taken under advisement.

3 H. Upon a fifth conviction pursuant to this
4 section, an offender is guilty of a fourth degree felony and,
5 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
6 shall be sentenced to a term of imprisonment of two years, one
7 year of which shall not be suspended, deferred or taken under
8 advisement.

9 I. Upon a sixth conviction pursuant to this
10 section, an offender is guilty of a third degree felony and,
11 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
12 shall be sentenced to a term of imprisonment of thirty months,
13 eighteen months of which shall not be suspended, deferred or
14 taken under advisement.

15 J. Upon a seventh or subsequent conviction pursuant
16 to this section, an offender is guilty of a third degree felony
17 and, notwithstanding the provisions of Section 31-18-15 NMSA
18 1978, shall be sentenced to a term of imprisonment of three
19 years, two years of which shall not be suspended, deferred or
20 taken under advisement.

21 K. Upon any conviction pursuant to this section, an
22 offender shall be required to participate in and complete,
23 within a time specified by the court, an alcohol or drug abuse
24 screening program approved by the department of finance and
25 administration and, if necessary, a treatment program approved

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1 by the court. The requirement imposed pursuant to this
2 subsection shall not be suspended, deferred or taken under
3 advisement.

4 L. Upon any conviction pursuant to this section, a
5 person shall not purchase alcoholic beverages from a retailer
6 for a period of five years. In the event a person has
7 subsequent convictions for driving while under the influence of
8 intoxicating liquor or drugs, pursuant to this section, the
9 person shall not purchase alcoholic beverages from a retailer
10 for a period of five years; provided that the time period does
11 not exceed a total period of five years following the most
12 recent conviction.

13 [~~L.~~] M. Upon a second or third conviction pursuant
14 to this section, an offender shall be required to participate
15 in and complete, within a time specified by the court:

16 (1) not less than a twenty-eight-day
17 inpatient, residential or in-custody substance abuse treatment
18 program approved by the court;

19 (2) not less than a ninety-day outpatient
20 treatment program approved by the court;

21 (3) a drug court program approved by the
22 court; or

23 (4) any other substance abuse treatment
24 program approved by the court.

25 The requirement imposed pursuant to this subsection shall

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1 not be suspended, deferred or taken under advisement.

2 [M-] N. Upon a felony conviction pursuant to this
3 section, the corrections department shall provide substance
4 abuse counseling and treatment to the offender in its custody.
5 While the offender is on probation or parole under its
6 supervision, the corrections department shall also provide
7 substance abuse counseling and treatment to the offender or
8 shall require the offender to obtain substance abuse counseling
9 and treatment.

10 [N-] O. Upon a first conviction for aggravated
11 driving while under the influence of intoxicating liquor or
12 drugs pursuant to the provisions of Subsection D of this
13 section, as a condition of probation, an offender shall be
14 required to have an ignition interlock device installed and
15 operating for a period of one year on all motor vehicles driven
16 by the offender, pursuant to rules adopted by the bureau.
17 Unless determined by the sentencing court to be indigent, the
18 offender shall pay all costs associated with having an ignition
19 interlock device installed on the appropriate motor vehicles.
20 If an offender drives a motor vehicle that does not have an
21 ignition interlock device installed on the motor vehicle, the
22 offender may be in violation of the terms and conditions of his
23 probation.

24 [O-] P. Upon a first conviction for driving while
25 under the influence of intoxicating liquor or drugs pursuant to

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1 the provisions of Subsection A, B or C of this section, as a
2 condition of probation, an offender may be required to have an
3 ignition interlock device installed and operating for a period
4 of one year on all motor vehicles driven by the offender,
5 pursuant to rules adopted by the bureau. Unless determined by
6 the sentencing court to be indigent, the offender shall pay all
7 costs associated with having an ignition interlock device
8 installed on the appropriate motor vehicles. If an offender
9 drives a motor vehicle that does not have an ignition interlock
10 device installed on the motor vehicle, the offender may be in
11 violation of the terms and conditions of his probation.

12 [P-] Q. Upon any subsequent conviction pursuant to
13 this section, as a condition of probation, a subsequent
14 offender shall be required to have an ignition interlock device
15 installed and operating for a period of at least one year on
16 all motor vehicles driven by the subsequent offender, pursuant
17 to rules adopted by the bureau. Unless determined by the
18 sentencing court to be indigent, the subsequent offender shall
19 pay all costs associated with having an ignition interlock
20 device installed on the appropriate motor vehicles. If a
21 subsequent offender drives a motor vehicle that does not have
22 an ignition interlock device installed on the motor vehicle,
23 the subsequent offender may be in violation of the terms and
24 conditions of his probation.

25 [Q-] R. In the case of a first, second or third

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1 offense under this section, the magistrate court has concurrent
2 jurisdiction with district courts to try the offender.

3 ~~[R.]~~ S. A conviction pursuant to a municipal or
4 county ordinance in New Mexico or a law of any other
5 jurisdiction, territory or possession of the United States or
6 of a tribe, when that ordinance or law is equivalent to New
7 Mexico law for driving while under the influence of
8 intoxicating liquor or drugs, and prescribes penalties for
9 driving while under the influence of intoxicating liquor or
10 drugs, shall be deemed to be a conviction pursuant to this
11 section for purposes of determining whether a conviction is a
12 second or subsequent conviction.

13 ~~[S.]~~ T. In addition to any other fine or fee that
14 may be imposed pursuant to the conviction or other disposition
15 of the offense under this section, the court may order the
16 offender to pay the costs of any court-ordered screening and
17 treatment programs.

18 ~~[T.]~~ U. As used in this section:

19 (1) "bodily injury" means an injury to a
20 person that is not likely to cause death or great bodily harm
21 to the person, but does cause painful temporary disfigurement
22 or temporary loss or impairment of the functions of any member
23 or organ of the person's body;

24 (2) "commercial motor vehicle" means a motor
25 vehicle or combination of motor vehicles used in commerce to

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transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

(3) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Section 6. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2005.